

In the Matter of Merchant Mariner's Document No. Z-766805-D1 and  
all other Seaman Documents

Issued to: NORMAN B. BORDEN

DECISION OF THE COMMANDANT  
UNITED STATES COAST GUARD

1083

NORMAN B. BORDEN

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.11-1.

By order dated 21 July 1958, an Examiner of the United States Coast Guard at New Orleans, Louisiana suspended Appellant's seaman documents upon finding him guilty of misconduct. Two specifications allege that while serving as able seaman on board the United States SS JANET QUINN under authority of the document above described, on or about 13, 22 and 23 June 1958, Appellant was absent from his duties without permission; on or about 21 June 1958, Appellant failed to join his vessel.

At the hearing, Appellant elected to act as his own counsel. He entered a plea of guilty to the failure to join specification and not guilty to the specification alleging absence from duties on three separate dates. The Investigating Officer introduced in evidence certified copies of entries in the ship's Official Logbook and a certified copy of extracts from the Shipping Articles. Appellant testified that he had the Boatswain's permission to leave the ship on 13 June but that he left the ship on 21 June in order to attend the funeral of a shipmate although denied permission by the Master. The Examiner concluded that the charge and two specifications had been proved. An order was entered suspending all documents, issued to Appellant, for a period of two months outright plus four months on eighteen months' probation.

FINDINGS OF FACT

From 30 May to 18 July 1958, Appellant was serving as an able seaman on board the United States SS JANET QUINN and acting under authority of his Merchant Mariner's Document No. Z-766805-D1 while the ship was on a foreign voyage.

On 13 June, Appellant left the ship with the permission of the Boatswain. He was later logged one day's pay for being absent from his duties on this date.

On 21 June, Appellant failed to join the ship upon her departure from Alicante, Spain. He remained ashore to attend the funeral of a shipmate after the Master refused to give Appellant permission to do so. Appellant rejoined the ship at a different port on a date between 24 and 30 June. He was logged one day's pay each for failure to join on 21 June, absence on 22 June and absence on 23 June.

These entries appear as follows in the certification from the official Logbook:

"Norman B. Borden, A.B. Z No: 766805

June 13, 1958: Lisbon, Portugal 1300-1700 Absent from duties without just cause.

June 21, 1958: Alicante, Spain. Failed to join ship sailing for Barcelona.

June 22, 1958: At Sea. Absent from duties.

June 23, 1958: Barcelona. Absent from duties.

Logged 4 days' pay: 1 ea. offense. Amt. \$47.10

Witness to offense: W.M. Leatherwood, Ch. Mate A. Keerson, Master

"Log Read and delivered to Seaman 6/30/58 @ 1615 hrs.

Seaman's Reply: `No Comment.'

Witness to Logging: W.M. Leatherwood, Ch. Mate R.W. Rahn, 3rd Mate

/s/ W. Leatherwood  
Chief Mate

/s/ Albert Keerson  
A. Keerson, Master"

Appellant's prior record consists of an admonition in 1952 for being absent without leave and a two months' outright suspension plus probation in 1956 for assaulting a shipmate.

#### BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is requested that the two months' outright portion of the suspension be modified to one month so that Appellant will not have to wait for employment and additional period wholly in excess of two months after registering with the union when the outright

portion of the suspension has been completed.

#### OPINION

As shown by the log entries, there is ambiguity as to whether the individually dated entries were made on the dates of the alleged offenses in accordance with 46 U.S.C. 702 or at some later date or dates prior to 30 June at which time it is stated in the logbook, the "log" was "read and delivered" to Appellant. In any event, the entry pertaining to 13 June is not adequate to make out a prima facie case as to the offense alleged on this date because it does not substantially comply with the requirements of 46 U.S.C. 702. The entry could not have been signed by the Master and Chief Mate until at least after the entry for 23 June was made ten days later; and the entry was neither read to Appellant nor a copy of it given to him until 30 June. In both respects, the delay was so unreasonable as to preclude meeting the test of substantial compliance with 46 U.S.C. 702. Hence, Appellant's testimony that he left the ship with the permission of the Boatswain must prevail.

The finding that Appellant was absent from his duties without permission on 13, 22 and 23 June is hereby set aside and the entire specification is dismissed. With respect to the alleged offenses on 22 and 23 June, similar allegations were dismissed in Commandant's Appeal Decision No. 1076 because unauthorized absence is a necessarily included lesser offense of the offense of failure to join. The duration of the absence is simply an aggravating circumstance of the failure to join which includes the additional element of absence at the particular time when the ship departs from a port. Appellant admits that he failed to join his ship on 21 June. The record does not specifically state when he rejoined the vessel. He was back on board on 30 June as shown by the logbook entry. In view of the logging for only 22 and 23 June, the implication is that he rejoined on 24 June.

Appellant's plea of guilty to the allegation of failure to join on 21 June is adequate to support that specification. Despite the dismissal of the other specification, the order of suspension imposed is not considered to be excessive under the circumstances. Appellant's services as an able seaman were most needed when the ship was preparing to get underway and then was at sea. Also, replacements are often difficult to obtain in foreign ports. Appellant was absent from the ship for at least three days during which time his work had to be performed by other members of the crew. Consequently, there would be no justification for modifying the period of outright suspension as requested on appeal.

#### ORDER

The order of the Examiner dated at New Orleans, Louisiana, on  
21 July 1958, is AFFIRMED.

J. A. Hirshfield  
Rear Admiral, United States Coast Guard  
Acting Commandant

Dated at Washington, D. C., this 20th day of January 1959.